

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number

Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL**  
**For FY 2007****Complete if Known**☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

130.00

Application Number	10/597,099
Filing Date	July 11, 2006
First Named Inventor	Claus Harder
Examiner Name	TBA
Art Unit	1615
Attorney Docket No.	149459.00003

**METHOD OF PAYMENT** (check all that apply)☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 50-1429 Deposit Account Name: Powell Goldstein LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
<b>Total Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
<b>Indep. Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
- 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

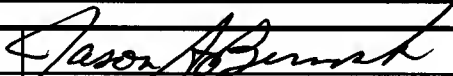
**Fees Paid (\$)**

\$130.00

Other (e.g., late filing surcharge): \_\_\_\_\_

**SUBMITTED BY**

Signature

Registration No.  
(Attorney/Agent) 31,236

Telephone 404-572-6900

Name (Print/Type) Jason A. Bernstein

Date 4-26-07

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

149459.00003



## UNITED STATES PATENT AND TRADEMARK OFFICE

02 APR 2007

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

POWELL GOLDSTEIN LLP.  
ONE ATLANTIC CENTER  
FOURTEENTH FLOOR 1201 WEST PEACHTREE STREET NW  
ATLANTA GA 30309-3488

In re Application of	:	
HARDER et al.	:	DECISION ON
Application No.: 10/597,099	:	
PCT No.: PCT/EP2005/001167	:	PAPERS
Int. Filing Date: 04 February 2005	:	
Priority Date: 06 February 2004	:	UNDER 37 CFR 1.42
Attorney's Docket No.: 149459.00003	:	
For: IMPLANT FOR RELEASING AN ACTIVE	:	
SUBSTANCE INTO A VESSEL THROUGH WHICH	:	
A BODY MEDIUM FLOWS	:	

This is a decision on the submission filed by applicants on 11 July 2006 and on 29 November 2006, each of which was accompanied by, *inter alia*, a declaration of the inventors. The indication in these declarations that inventor Bernd Heublen is deceased has properly been treated as a request for status under 37 CFR 1.42.

This is also a decision on the "PETITION FOR CORRECTION OF INVENTORSHIP OF PATENT APPLICATION UNDER 35 U.S.C. 116 and 37 CFR 1.48(a)" filed by applicants on 29 November 2006, which has properly been treated as a petition under 37 CFR 1.497(d).

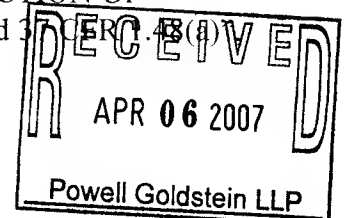
### **BACKGROUND**

On 04 February 2005, applicants filed international application PCT/EP2005/001167 which claimed a priority date of 06 February 2004 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 18 August 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 07 August 2006 (06 August 2006 being a Sunday).

On 11 July 2006, applicants filed for entry into the national stage in the United States accompanied by, *inter alia*, the basic national fee, a substitute specification, a marked-up copy of the substitute specification, and a declaration of inventors. The indication in this declaration that inventor Bernd Hueblen is deceased has been treated as a request for status under 37 CFR 1.42.

On 29 November 2006, applicants filed a "PETITION FOR CORRECTION OF INVENTORSHIP OF PATENT APPLICATION UNDER 35 U.S.C. 116 and 37 CFR 1.48(a)"

**DOCKETED**  
418-01



which has properly been treated as a petition under 37 CFR 1.497(d). The submission was also accompanied by a declaration of inventors. The indication in this declaration that inventor Bernd Hueblen is deceased has also been treated as a request for status under 37 CFR 1.42.

### **DISCUSSION**

The declaration of inventors filed 11 July 2006 is not in compliance with 37 CFR 1.497(a)-(b). 37 CFR 1.41(a)(4) states:

The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any change effected under PCT Rule 92bis. See § 1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92bis subsequent to the execution of any declaration filed under PCT Rule 4.17(iv) (§ 1.48(f)(1) does not apply to an international application entering the national stage under 35 U.S.C. 371).

The declaration filed 11 July 2006 does not list the inventorship set forth in the international application. The declaration only lists five of the six inventors listed in the international application. A Form PCT/IB/306 (NOTIFICATION OF THE RECORDING OF A CHANGE) from the International Bureau indicating that inventor Heinz Muller has been removed does not appear in the application file. Nor is there any other indication that a PCT Rule 92<sup>bis</sup> change has been made in the above-identified international application. Accordingly, the inventorship in the national stage is the inventorship set forth in the international application and the declaration filed 31 May 2006 is not sufficient.

#### **Petition Under 37 CFR 1.497(d)**

The petition filed 29 November 2006 requests that Heinz Muller be added as an inventor. This petition has properly been treated as a petition under 37 CFR 1.497(d). However, the petition is moot since, as noted above, Heinz Muller is already identified as an inventor in the international application (see the second page of the published document).

#### **Request Under 37 CFR 1.42**

The declaration filed 29 November 2006 fails to comply with 37 CFR 1.497(a)-(b). The declaration does not include the full name *and citizenship* of the deceased inventor (37 CFR 1.497(a)(3)).

#### **Declaration filed 29 November 2006**

The declaration filed 29 November 2006 is an improper composite declaration, consisting of one of Page 1, two of Page 2, one of Page 1 of 2, two of Page 2 of 2, and Supplemental Page. Each inventor must be presented with a complete declaration which lists all of the inventors, and the signature of each inventor must appear on at least one complete declaration. Multiple complete declarations may be submitted, but it is not permissible to combine pages of separate documents. (The declaration filed 11 July 2006 was also a composite declaration.)

Translation

Applicant has not provided a translation of the international application as filed. The submission of 11 July 2006 includes a substitute specification and a marked-up copy of the substitute specification but does not include an English translation of the application as originally filed.

CONCLUSION

For the above reasons, the petition under 37 CFR 1.497(d) is **DISMISSED** as **MOOT**.

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Applicant is required to submit a proper declaration or declarations in compliance with 37 CFR 1.497 and 1.42, an English translation of the international application as filed, and the processing fee under 37 CFR 1.492(i) for providing the translation later than thirty months from the priority date, within a time period of **TWO (2) MONTHS** from the mail date of this Decision. THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 CFR 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT. Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42."



Daniel Stemmer  
Legal Examiner  
PCT Legal Affairs  
Office of Patent Cooperation Treaty  
Legal Administration  
Telephone: (571) 272-3301  
5Facsimile: (571) 273-0459